

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

vs.

11-cr-602

JOSEPH VINCENT JENKINS,

Defendant.
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Transcript of *Faretta Hearing* held on
May 29, 2013, at the James Hanley Federal Building,
100 South Clinton Street, Syracuse, New York, the
HONORABLE GLENN T. SUDDABY, United States District Judge,
Presiding.

A P P E A R A N C E S

For Government: OFFICE OF THE UNITED STATES ATTORNEY
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1 THE CLERK: Case number 5:11-cr-602. Counsel,
2 please note your appearance for the record. And the
3 defendant, if you would note your appearance after she notes
4 theirs.

5 MS. CARROLL: Good morning, Your Honor. Gwen
6 Carroll and Tamara Thomson appearing on behalf of the
7 government.

8 THE COURT: Good morning.

9 MR. JENKINS: Joseph Jenkins appearing.

10 THE COURT: Good morning, Mr. Jenkins. We're
11 here to accomplish a few things this morning. First of all,
12 we met some time ago to discuss, Mr. Jenkins, your ability
13 and opportunity and desire to get an attorney and what you
14 wanted to do, and I believe I asked two different counsel to
15 go meet with you. And I understand that they did, is that
16 correct?

17 THE DEFENDANT: Yes.

18 THE COURT: And can you tell me, have you made
19 any decisions about what you're going to do about legal
20 representation?

21 THE DEFENDANT: I stated before I want to
22 represent myself for the time being. I've asked for
23 discovery ever since I've been in here and I haven't been
24 able to obtain it through attorneys, and I don't know if the
25 only way to get it is to represent myself or not.

1 THE COURT: I would say probably not. Okay?
2 You've been represented by counsel previously and you've made
3 motions and you've requested certain things, and the
4 government has an obligation to turn over certain things that
5 are in their control, possession and control, and you've made
6 motions with regard to that. I issued some decisions and
7 orders with regard to that. We'll deal with that shortly as
8 far as what's been turned over and what the government has an
9 obligation to turn over, we'll lay that out for you to
10 understand.

11 But I don't believe that there is going to be
12 any -- I can tell you there isn't going to be any change with
13 regard to what you legally have a right to and what the
14 government legally has a responsibility to turn over to you.
15 Now, you may be able to get some of the things that you want
16 on your own, and certainly that's easier with the assistance
17 of an attorney. A number of things are easier with the
18 assistance of an attorney.

19 One of the things that I want to emphasize
20 very strongly, and depending on how you answer I'm going to
21 go through an entire list of questions to ensure that you
22 understand how important it is that you be represented by
23 legal counsel. It's critical with regard to no matter what
24 you decide to do, whether it's to go to trial, to enter a
25 plea; I know you expressed no interest in that. But

1 regardless of what you decide you want to do in this case, it
2 is critical that you have legal representation.

3 Now, at one of our prior conferences here in
4 this courtroom you indicated to me that your parents were
5 involved in trying to assist you in retaining an attorney.
6 Based on that, this Court reached out to your parents and
7 just to see if they had any success or if they wanted to be
8 involved in this court proceeding where I was going to talk
9 to you about how important it is to have legal
10 representation. You sent me a letter objecting to that. And
11 let me make it clear, in no way did this Court order or
12 demand or any way else that your parents be here. After your
13 letter, as a matter of fact, I had my clerk contact your
14 parents to make it perfectly clear that they did not have to
15 come here; the Court was not requiring them to come here. I
16 was just reaching out to try and assist you and the court to
17 find out if they had had any success in helping you to retain
18 an attorney.

19 And secondly, based on the fact that you
20 represented they were trying to help you, I thought they
21 would be very interested and want to be involved or at least
22 be present for this particular hearing today for you to make
23 a decision about whether or not you're going to retain legal
24 counsel in going forward. It was my hope that if you needed
25 to, you might want to have a discussion with them to assist

1 you in making that decision. Okay? So I want that to be
2 clear, Mr. Jenkins. I was in no way ordering your parents to
3 be here. I hope you understand that.

4 THE DEFENDANT: That's fine. They were just
5 out of town and I didn't want them --

6 THE COURT: I understand. I understood from
7 your letter. And we contacted them to make sure that they
8 understood that we weren't requiring them to be here. And I
9 see I believe in the front row here they are here, and if you
10 get to a point where you want to talk to them, I'm going to
11 encourage the marshals or ask the marshals to allow you to do
12 that. I'll have them come up inside the bar and sit at that
13 back table and you can turn around and talk to them if that's
14 something you want to do with regard to this legal counsel
15 thing.

16 So, when you say to me you think you want to
17 represent yourself at this point, tell me what you mean by
18 that.

19 THE DEFENDANT: I can't find a lawyer that
20 wants to do what I want them to do. And I've been through
21 this, I went through it for a year and a half with Jeff
22 Parry. I said there is certain things that I need for my
23 case. Look, it's right here on the paper, they have this,
24 this and this, I want it. Well, yeah, we'll get it, we'll do
25 this. Well, nothing is happening, it's gone on for a year

1 and a half.

2 So, I mean there is -- this case is four years
3 old and there is a lot of things that happened prior to this,
4 I know the U.S. Government doesn't seem to want to get into,
5 but they're very essential to my defense. The facts have not
6 come out yet what has really happened in this Canada case
7 that led to what's going on here, and I want to make sure
8 that one way or another it comes out.

9 And the government jumped into the middle of a
10 Canadian proceeding and took evidence. And there was already
11 testimony on file as to what happened, there has been reports
12 issued. The Canadian proceedings were not finished. The
13 Canadian proceedings did not produce a complete forensic exam
14 on the computer. This is all on record. I'm assuming that
15 the forensic exams they have are not going to prove because
16 they weren't any completed ones. And it's all on record and
17 that's why I'm requesting this discovery.

18 THE COURT: Well, Mr. Jenkins, as I've
19 indicated there are certain things you're entitled to under
20 the law and certain things that you're not, that the
21 government has no obligation and requirement to provide to
22 you if they don't have custody and control of those
23 particular items. Regardless of the fact that you think that
24 they're working with the Canadian government, they may have
25 some cooperation to some extent, but their legal obligations

1 only go so far. And certainly legal counsel, somebody who's
2 trained in the law, can advise you to that.

3 Now, whether you take their advice or not is
4 another issue, and whether you want to accept or not what the
5 law says in this country with regard to what you're entitled
6 to, that's another issue too. But, certainly, you're better
7 off with legal representation and being able to discuss with
8 someone what your legal rights are so that you have an
9 appreciation and understanding about what you can get through
10 a discovery demand from the government and what you may get
11 on your own if you want to try and get it.

12 And, certainly, it's difficult for you to try
13 and get things on your own when you're in jail. So, legal
14 counsel is of great assistance in that area. But please
15 understand that they need to understand and appreciate the
16 things they can demand from the government, from the U.S.
17 Attorney's Office, and what they are obligated to provide and
18 what you may be able to get on your own are two different
19 things. If you were involved in the Canadian proceedings,
20 which obviously you were, you're a party to it, therefore,
21 your rights with regard to requesting things, I don't know
22 Canadian law, but maybe you have more of a right to ask for
23 that stuff than somebody else.

24 THE DEFENDANT: See, that's the thing. The
25 last year and a half with Jeff Parry, Jeff Parry got stuff

1 from Canada and it's been confirmed but he didn't want to
2 share it with me. And I mean, obviously, I can't get it by
3 myself. It just hasn't worked out with an attorney so far.

4 THE COURT: Well, Mr. Jenkins, you need an
5 attorney. I mean, there are certain things you need to
6 understand, and at this point I'm going to go through a list
7 of things that I'm required to cover with you so that I know
8 that you have an appreciation of how important it is to be
9 represented. Okay? So bear with me, I'm going to go through
10 this.

11 First of all, how old are you?

12 THE DEFENDANT: Forty-three.

13 THE COURT: Forty-three. You obviously can
14 read and write; you've submitted all sorts of motions and
15 things like that. No problem with doing that?

16 THE DEFENDANT: Yes.

17 THE COURT: You have no difficulty
18 understanding the English language. The Court can make the
19 assessments of that from your appearances before me. How far
20 did you go in school?

21 THE DEFENDANT: I have two years of college
22 and I took some extra courses after that.

23 THE COURT: So, you're a high school graduate
24 and you have some college education?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay. Are you married?

2 THE DEFENDANT: No.

3 THE COURT: Divorced?

4 THE DEFENDANT: No.

5 THE COURT: Do you have any children?

6 THE DEFENDANT: No.

7 THE COURT: Your parents are here today, is
8 that correct?

9 THE DEFENDANT: Yes.

10 THE COURT: And you have regular contact with
11 your parents?

12 THE DEFENDANT: Yes.

13 THE COURT: Any siblings?

14 THE DEFENDANT: A sister.

15 THE COURT: Do you have regular contact with
16 your sister?

17 THE DEFENDANT: No.

18 THE COURT: What's your employment history?
19 Have you worked since leaving school?

20 THE DEFENDANT: I've worked since I was 12
21 years old, mostly self-employed.

22 THE COURT: Doing what type of work?

23 THE DEFENDANT: Construction type work.

24 THE COURT: And when you say construction?

25 THE DEFENDANT: Mostly, I was --

1 THE COURT: What type of construction?

2 THE DEFENDANT: Mostly electrical work.

3 THE COURT: Electrical work. So residential
4 or commercial?

5 THE DEFENDANT: Residential, commercial and
6 industrial.

7 THE COURT: Okay. And were you required to
8 have any licenses or certifications to do that work?

9 THE DEFENDANT: No. I went to school for a
10 year.

11 THE COURT: But a lot of times if you're going
12 to do electrical work, there is certain certifications that
13 are required. You didn't have any of that?

14 THE DEFENDANT: No. That's only in the big
15 cities, don't have that in the small towns.

16 THE COURT: Where were you doing this kind of
17 work?

18 THE DEFENDANT: Geneva, Canandaigua, Waterloo,
19 Seneca Falls.

20 THE COURT: Okay. Have you ever been treated
21 for any sort of mental illness?

22 THE DEFENDANT: No.

23 THE COURT: Have you -- do you have a history
24 of drug and alcohol use?

25 THE DEFENDANT: No.

1 THE COURT: Are you currently taking any
2 medications?

3 THE DEFENDANT: No.

4 THE COURT: Nothing?

5 THE DEFENDANT: Just an allergy pill.

6 THE COURT: Allergy pill, okay. Has anyone
7 advised you not to use a lawyer? Have you talked to anybody
8 and somebody's given you advice, either in jail or someplace
9 else, and they said you don't need a lawyer?

10 THE DEFENDANT: No. It's my own decision.

11 THE COURT: No one has threatened you about
12 use of a lawyer or not using a lawyer?

13 THE DEFENDANT: No.

14 THE COURT: And you understand that you have a
15 Sixth Amendment right under the United States Constitution to
16 be represented by a lawyer at trial and at every other stage
17 of these proceedings? Do you understand that?

18 THE DEFENDANT: Yes. Yes.

19 THE COURT: And do you understand these
20 charges that have been filed against you?

21 THE DEFENDANT: Yes.

22 THE COURT: Tell me what you've been charged
23 with.

24 THE DEFENDANT: Um, transporting, transporting
25 child pornography into Canada.

1 THE COURT: And there is another charge.
2 What's that one?

3 THE DEFENDANT: Possession.

4 THE COURT: Possession of child pornography.
5 Okay. And during the time that you were represented by a
6 lawyer in this case, did you discuss these charges with your
7 attorney?

8 THE DEFENDANT: Yes.

9 THE COURT: And you can assure me you
10 understand what these charges are?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you have any questions about
13 the charges, what the charges are?

14 THE DEFENDANT: Well, I have a lot of
15 questions how it ended up in the United States, but not to
16 the charges themselves, no.

17 THE COURT: What I'm going to do now is I'm
18 going to have the government advise you of the potential
19 penalties of these charges. I want to make sure that you
20 understand, I want it on the record that you understand what
21 you're looking at as far as potential penalties.

22 Ms. Thomson, if you could go ahead.

23 MS. THOMSON: Yes, Your Honor. For the first
24 count, that's the transportation of child pornography, the
25 term of incarceration would be not less than five years, not

1 more than twenty years, so there is a mandatory minimum of
2 five years incarceration. Term of supervised release would
3 be five years to life. Maximum fine would be \$250,000. A
4 special assessment of \$100. And as a result of conviction in
5 this case, the defendant would be required to register as a
6 sex offender, would be subject to prosecution under 18 U.S.C.
7 Section 2250. There will be also consequences typical to a
8 felony conviction, include but are not limited to the loss of
9 the right to vote and to bear arms.

10 With regard to the second count, that is the
11 possession of child pornography, the term of incarceration
12 would be not more than ten years, also supervised release
13 term of five years to life, same fine, \$250,000 max, special
14 assessment of \$100.

15 THE COURT: Thank you, Ms. Thomson.
16 Mr. Jenkins, do you have any question about those potential
17 penalties that you're facing?

18 THE DEFENDANT: No.

19 THE COURT: And do you understand that if
20 you're convicted on these charges, you will have a permanent
21 criminal record? Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: And you don't have any questions
24 about any of those potential penalties?

25 THE DEFENDANT: No.

1 THE COURT: Now, I want to talk to you about
2 some of the advantages of being represented by a lawyer. And
3 certainly an attorney's legal knowledge and experience is
4 incredibly helpful and useful, despite what you've indicated
5 your experience with Mr. Parry is, pretrial getting ready for
6 trial and knowing what the issues are, what the legal issues
7 are, what they need to address, what witnesses they may need
8 to call or not call, what things they need to request from
9 the government, the ability to secure potentially favorable
10 evidence and how that evidence can be introduced in a court
11 of law. All those things pretrial are critical.

12 Now, with regard to advantages of being
13 represented by a lawyer at trial, and this is where I really
14 emphasize that the legal training and the experience of
15 courtroom procedures, rules of evidence, law of evidence and
16 a number of other things, the incredible disadvantage that
17 you will be at without legal representation.

18 First of all, a lawyer has the experience and
19 knowledge of this entire process. He or she would be able to
20 argue for your side during the whole trial and present the
21 best legal arguments possible on your behalf for your
22 defense. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And since a jury qualification and
25 selection are governed by numerous legal procedures, a lawyer

1 with knowledge and experience in selecting a jury and going
2 through the jury selection process is also critical. Do you
3 understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: There are rules and procedures
6 with regard to that. A lawyer can call witnesses for you,
7 question those witnesses, cross-examine witnesses against you
8 and present evidence on your behalf. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: A lawyer can advise you on whether
11 you should testify or not and help you and assist you with
12 that decision, advise you of what you have a right not to say
13 and advise you on things that you may want to say in front of
14 a jury and this Court. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: A lawyer has studied the rules of
17 evidence, knows what evidence can or cannot come into your
18 trial. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: A lawyer may be able to provide
21 assistance in ensuring that a jury is given complete and
22 accurate jury instructions by the Court and may make
23 effective closing arguments on your behalf and may prevent
24 improper argument by the government. Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: And a lawyer may ensure that any
2 errors committed during the trial are properly preserved for
3 appellate review later by a higher court, which takes an
4 appreciation and understanding of the law. Do you understand
5 that?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. Do you have any questions
8 about those potential advantages regarding the trial and
9 having a lawyer represent you? Anything I can answer for
10 you?

11 THE DEFENDANT: No, not really.

12 THE COURT: All right. Now, I'm going to go
13 through a list of things with regard to the advantages of
14 having a lawyer represent you post trial. If you are
15 convicted, a lawyer's assistance may be useful in preparing
16 for sentencing, ensuring that favorable facts are brought to
17 the attention of the Court, ensuring that the Court is
18 advised of all legally available favorable dispositions and
19 ensuring that the sentence is lawfully imposed. Do you
20 understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: An attorney's legal knowledge and
23 experience may be useful in filing appeals and in seeking
24 release on bail pending an appeal. Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you have any questions about
2 these potential advantages of having an attorney with regard
3 to that stage of the proceedings?

4 THE DEFENDANT: No.

5 THE COURT: Now, I'm going to list for you as
6 best I can dangers and disadvantages of self representation.
7 And let me say to you before I start this section, that a
8 long time ago when I was a young lawyer I heard a judge
9 talking to an attorney who was charged criminally, and he
10 said to this attorney in advising him how important it was,
11 even though he had legal training, to have a different
12 attorney represent him on the criminal charges that he had
13 pending against him is because a person gets emotionally
14 involved when you're charged with something, when these
15 accusations are made, and it's hard to very difficult, even
16 if you have legal training, to separate that emotion of your
17 personal involvement with what you have to do as a
18 professional and as an attorney in understanding the law and
19 making clear judgments about what the appropriate thing to
20 do. And the judge looked at this attorney and said, only a
21 fool wouldn't have an attorney represent him, and you would
22 have a fool for a client if you tried to represent yourself.
23 And I thought that was incredibly good advice, and I'm trying
24 to make a point to you here as I go through this list of
25 dangers and disadvantages.

1 You would be proceeding alone in a complex
2 area where experience and professional training are greatly
3 desired. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: A lawyer might be aware of
6 possible defenses to charges against you that you may not
7 understand or appreciate. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: You will not get any special
10 treatment from this Court just because you are representing
11 yourself. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: You will not be entitled to a
14 continuance simply because you wish to represent yourself.
15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: You will also be limited to the
18 legal resources that are available to you while you're in
19 custody which puts you at an incredible disadvantage. You
20 will not be entitled to any additional library privileges
21 just because you are representing yourself, and a lawyer has
22 fewer restrictions in researching your defense, obviously.
23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: And you are not required to

1 possess the legal knowledge or skills of an attorney in order
2 to represent yourself; however, you will be required to abide
3 by the rules of criminal law, the rules of this courtroom
4 procedure. And these laws took lawyers years to learn and
5 abide by. And if you demonstrate an unwillingness to abide
6 by these rules, I may terminate your self representation. Do
7 you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: In other words, you don't know
10 these rules, and if you're fumbling around and you can't
11 follow them and you're impeding the progress of the trial,
12 then I may terminate your ability to represent yourself.

13 If you are disruptive in the courtroom, I can
14 terminate your self representation and have you removed from
15 the courtroom, in which case the trial would continue without
16 your presence. Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Your access to an Assistant United
19 States Attorney who is prosecuting this case will be severely
20 reduced as compared to a lawyer who could easily contact the
21 Assistant U.S. Attorney and discuss this case with them and
22 request certain information, which would be very difficult
23 for you to do. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: In addition, the government will

1 not go easier on or give you any special treatment because
2 you are representing yourself. The government will present
3 its case against you as experienced lawyers and will provide
4 you no special consideration as a result of you representing
5 yourself. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: And finally, if you are convicted,
8 you cannot claim on appeal that your own lack of legal
9 knowledge or skill constitutes a basis for a new trial. In
10 other words, you cannot claim that you received ineffective
11 assistance of counsel based on your own representation. Do
12 you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Can I answer any questions for
15 you?

16 THE DEFENDANT: How am I not entitled to a law
17 library or anything like that?

18 THE COURT: You're not entitled to any greater
19 access than you already have just because you're representing
20 yourself.

21 THE DEFENDANT: County, all I'm entitled to is
22 county?

23 THE COURT: All you're entitled to is what's
24 there and what they have for you.

25 THE DEFENDANT: Whatever.

1 THE COURT: Again, Mr. Jenkins, nobody can
2 tell me or you right now what the outcome of this case is
3 going to be, but it is critically important that you have
4 appropriate legal representation to help you through this.
5 And I'm going to ask you again, and I'll give you an
6 opportunity at this point to have your parents come and sit
7 at that back table and for you to discuss this with them.
8 But I'm urging you, sir, to go ahead and get a lawyer. And
9 again I've indicated if you have difficulty in finding one,
10 which you've indicated that you have, I will send lawyers to
11 see you, a couple more. If you didn't like the two that went
12 to see you, they're both very good and qualified attorneys to
13 discuss this with, but you got to listen to them and work
14 with them, and I'm sure they'll listen to you. And they can
15 explain to you reasons why or why not you can get certain
16 discovery, may be able to assist you as a party to this case
17 that you're concerned about in Canada in getting certain
18 things because you are a party or you were a party to that
19 case. So, again, it's critically important that you have
20 some legal counsel.

21 Would you like your parents to come sit at
22 that table so that you can talk to them?

23 THE DEFENDANT: All right.

24 THE COURT: Folks, come on up, sit at that
25 back table. I'm going to have your son turn around and talk

1 to you across that back table. Go ahead, Mr. Jenkins, turn
2 your chair around, slide it up to that table so you can talk
3 to your parents.

4 (Discussion held off the record.)

5 THE COURT: Mr. Jenkins, I think you
6 completely understand how strongly I feel and believe how
7 important it is for your best interest to be represented by
8 an attorney. And you've had an opportunity to consider this
9 and talk with your parents. How do you want to proceed, sir?

10 THE DEFENDANT: I will proceed by myself for
11 the time being.

12 THE COURT: Okay. Well, then what I'm going
13 to do, Mr. Jenkins, is I'm going to appoint stand-by trial
14 counsel, which means I'm going to appoint counsel, and he or
15 she will be available to you if you have questions in the
16 course of the proceedings, because what we're going to do
17 right now is we're going to talk about the discovery
18 obligations of the government. I'm going to hear from the
19 government as to what they provided and I'll hear from you as
20 to what you think is still outstanding and then we're going
21 to schedule a trial date. This matter needs to be tried. As
22 you've indicated, it's an old case and it needs to be moved
23 forward.

24 All these motions and appeals to the Second
25 Circuit and dismissing your one counsel and the rest of it

1 has taken a considerable amount of time away from getting
2 this matter resolved, so we're going to proceed and we're
3 going to get it resolved. And I will appoint stand-by trial
4 counsel for you. But you need to understand that it will be
5 your responsibility for the organization and the content of
6 presenting your case and you will have the entire
7 responsibility for your own defense. This attorney will be
8 made available to answer questions as we proceed to trial,
9 they'll be in the courtroom so that I know that there is
10 someone you can consult with, so if you're not doing things
11 appropriately or properly, you'll have someone to ask a
12 question how am I supposed to proceed in this manner and do
13 this or do that. But you're responsible for your own defense
14 and the entire content and presentation of that defense.
15 This attorney is just there to consult you. You understand
16 that?

17 THE DEFENDANT: Yes.

18 THE COURT: And you're sure that this is what
19 you want to do?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay, sir. Then that's what we're
22 going to do.

23 Ms. Carroll, with regard to the discovery, you
24 provided some information to the Court, a letter, and I'm
25 assuming you provided a copy of that to Mr. Jenkins.

1 Anything that you would like to indicate with regard to your
2 discovery responsibilities and what you've done to this
3 point?

4 MS. CARROLL: Your Honor, before the hearing
5 began today, the government did, as you indicated, give a
6 Bates stamped copy of all the disclosures that have been made
7 to date, including three additional disclosures pursuant to
8 the defendant's request. Those additional disclosures
9 include records of the defendant's border crossing activity,
10 a map of Lansdowne, Ontario, and a summary of a forensic
11 examination not conducted by any United States official, but
12 a summary that was created in connection with the Canadian
13 investigation that was produced by a Canadian law enforcement
14 agent.

15 Those are the only additional documents that
16 have been included in this discovery. The only omissions
17 from this discovery are financial records that have been
18 previously disclosed to the defendant but that are not
19 pertinent to the present prosecution.

20 The government would just again reiterate on
21 the record that it has given two opportunities to the
22 defendant for the defendant to make an in-person review of
23 the government's discovery disclosures. That first meeting
24 was March 15, 2012. At that meeting Jeff Parry was present.
25 At that point he was representing the defendant. The

1 defendant essentially shut down during that meeting and
2 refused to review discovery. The government then extended a
3 second offer to the defendant to make an in-person review of
4 the government's discovery. That offer was made in July. At
5 that point the meeting was schedule, Jeff Parry was present
6 at the meeting, and the defendant refused to come out of his
7 cell.

8 So, the government has made extensive efforts
9 to present all the discovery it has available and under which
10 it has an obligation to disclose. The only disclosures that
11 the defendant has not yet received are those that are
12 pursuant to the Jencks Act, which the government does not
13 have a present obligation to disclose. Should the material
14 that the government has in its possession that is covered by
15 Jencks, should the government be under that obligation at the
16 time of trial, it will make those disclosures. The
17 government has reviewed exhaustively all the inventory
18 discovery it has given and provided a Bates stamped inventory
19 to the defendant today, and it has prepared that inventory
20 and has provided it to the Court if the Court decides it is
21 necessary. It is a more exhaustive inventory than the one
22 that is currently on file with the court, and the government
23 is happy to provide any additional documentation that the
24 Court thinks is necessary or the government is obligated to
25 disclose.

1 THE COURT: Why don't you provide me with a
2 new copy of what you provided to Mr. Jenkins today so I have
3 them, because we're going to go to trial in a very short
4 period of time with regard to this case. And I want to make
5 sure that Mr. Jenkins gets his Speedy Trial. Anything else?

6 MS. CARROLL: No.

7 THE COURT: Mr. Jenkins, do you want to be
8 heard?

9 THE DEFENDANT: I don't want to take the time
10 to go through all that right at this second.

11 THE COURT: Doesn't sound like there is much
12 new there anyway, most of it has already been provided to
13 you.

14 THE DEFENDANT: I want to refer to my
15 April 28th letter request for discovery. I believe it was
16 sent twice. The Canadian forensic reports are turned over,
17 should have been called a C4P disclosure package, and it
18 should have had category reports, XML files, and a final
19 report. I want to make sure I have those.

20 THE COURT: Ms. Carroll, I'm going to let you
21 respond to each one of those, okay.

22 MS. CARROLL: And so Mr. Jenkins is aware, he
23 should have received or maybe has not yet gotten its way
24 through the prison mail system, but the government has gone
25 through that April 28th letter and identified each of the

1 categories he seeks disclosure of and has responded to them.
2 But the C4P disclosure packet, I'm going to read from the
3 government's previous response to Mr. Jenkins: As the above
4 inventory indicates, the government has previously disclosed
5 all warrant documentation and forensic examinations conducted
6 by the Canadians that are currently in its possession. Those
7 disclosures were made on October 21, 2011, and again further
8 Canadian documents were disclosed on July 23rd, 2012. To the
9 extent the defendant seeks any items from the Canadian
10 investigation that are not currently in the possession of the
11 government, the government maintains that it has no
12 obligation to seek disclosure or to obtain possession of
13 documents that are produced or created by people who are not
14 members of the prosecution team. The Canadian investigation,
15 the Canadian prosecution was completely discrete and separate
16 from the present prosecution, and so the government has
17 actually exceeded its discovery obligations obtaining the
18 forensic examination conducted by the Canadians.

19 THE COURT: Mr. Jenkins.

20 THE DEFENDANT: First of all, anything that
21 was turned over to Mr. Parry was irrelevant because Mr. Parry
22 didn't share things with me.

23 THE COURT: Well, Mr. Jenkins, Mr. Parry,
24 while he was representing you, I have no idea what he
25 obtained for you and what he didn't obtain for you, but what

1 I'm going to do, I'm going to have my clerk contact him today
2 and indicate if he has anything in his possession that he
3 obtained through discovery demands or otherwise through his
4 efforts in representing you, that it be sent to you
5 immediately in the jail and we'll get that done.

6 THE DEFENDANT: I have as part of the original
7 Canadian paperwork, again I can't really go through that
8 right now, but are the category reports in here?

9 THE COURT: Again, she's just answered your
10 question, Mr. Jenkins. Any reports that they have in their
11 control that they're responsible for she's indicated they've
12 turned over. Whether that report is there or not, I don't
13 know, and that may matter to you, you check it. If it's not
14 there, that means they as officers of this court have
15 indicated to me they don't have possession or control over.
16 Okay? That's what that means. And they don't have any
17 obligation to seek it out from the Canadian government.

18 THE DEFENDANT: Well, it said the Canadian
19 forensic reports were turned over to DHS the day after the
20 warrant was for my arrest.

21 THE COURT: Again, if they have it, they have
22 a responsibility to give it to you, and she's indicated that
23 they've done that.

24 THE DEFENDANT: But I have a list of what it
25 was supposed to be. So, I mean, I just don't want to get

1 back there and not have it and have to have this discussion
2 again.

3 THE COURT: Mr. Jenkins, understand something.
4 We're not going to have this discussion again. We're going
5 through this to make sure that you have the discovery
6 materials and you understand that what the government has
7 represented that they have, they've turned over to you.
8 Okay? And if there is some discovery violation where they
9 have something and they haven't turned it over, I'll deal
10 with that at trial. But at this point they have indicated
11 that everything they have in their control with regard to
12 that Canadian investigation, they've given to you. That's
13 their representation. Okay? So, if something's not there,
14 they're telling you they don't have it.

15 THE DEFENDANT: All right.

16 THE COURT: And they're telling me that as
17 well.

18 THE DEFENDANT: And the DHS, the analysis
19 files, do we have those?

20 THE COURT: Ms. Carroll?

21 MS. CARROLL: Your Honor, as the government
22 indicated in its filing on May 27th, there have been two
23 forensic analyses conducted in connection with this
24 investigation. The forensic examination reports have been
25 disclosed to the defendant, both the first report and the

1 second supplemental report.

2 THE DEFENDANT: That was insufficient.

3 THE COURT: Mr. Jenkins, you've got your
4 answer, sir. You may feel it's insufficient, but I'm telling
5 them and they know what their discovery obligations are and
6 what they represented both on paper and in court here today
7 is sufficient. So go ahead, what's your next issue?

8 THE DEFENDANT: Well, it says -- it says in
9 the back under examination of the report that analysis files
10 and spread sheets are available and will be kept at the
11 Buffalo ICE, DHS, whatever, that's what I need.

12 THE COURT: Ms. Carroll, are you aware of
13 these items?

14 MS. CARROLL: Any analysis files or spread
15 sheets that would contain digital images, Your Honor, the
16 government is not able to disclose. The government will
17 certainly inquire further if there is any supporting
18 documentation connected with these reports. The government
19 has so inquired. It's the government's view that anything
20 that is connected to the reports the government has. We will
21 ask again and if it turns out that there are spread sheets
22 that the government is not aware of now, we will certainly
23 disclose those to the defendant. But as of now, everything
24 that has been turned over to the government, everything that
25 was created by the government, the government is in

1 possession of.

2 THE COURT: I'm going to ask you to make one
3 more call or inquiry of DHS in Buffalo, and see if you don't
4 already have it and hasn't already been provided, do they
5 have it.

6 MS. CARROLL: We will do that, Your Honor.

7 THE COURT: Thank you. What else,
8 Mr. Jenkins? And please understand that we're going to
9 schedule a trial date here very shortly.

10 THE DEFENDANT: A list of people that were
11 interviewed when I was investigated by DHS.

12 THE COURT: Counsel, has that been provided?

13 MS. CARROLL: Your Honor, all the DHS reports
14 of activity in this case have been turned over to the
15 defendant. The DHS reports should detail any investigative
16 steps taken.

17 THE COURT: What else?

18 THE DEFENDANT: She said the border crossing
19 records were there.

20 THE COURT: She indicated earlier those are
21 there. That's new information that's been obtained and it's
22 been provided to you.

23 THE DEFENDANT: And I need the transcripts
24 from the court proceedings.

25 THE COURT: Counsel, do you care to respond?

1 MS. CARROLL: Your Honor, the government will
2 in all likelihood will have to invoke a mutual legal
3 assistance treaty in order to obtain those transcripts. The
4 government is doing its best to see about the transcripts.
5 It's the government's understanding that the defendant's
6 parents have already obtained those transcripts, which the
7 government learned when its agents attempted to contact the
8 Canadian court to obtain the transcripts. It's the
9 government's position those are public records. The
10 defendant is, in fact, in a better position to obtain those
11 transcripts because he was a party to the Canadian action.

12 And last, but not least, the government
13 actually has no obligation whatsoever to invoke a legal
14 assistance treaty to obtain those transcripts. With that
15 said, the government is doing its best and if the government
16 is able to get the transcripts, it will do so.

17 THE COURT: Mr. Jenkins, do you hear that
18 response?

19 THE DEFENDANT: Yes.

20 THE COURT: And specifically before you look
21 back to your parents, at least your father was shaking his
22 head no, that he didn't have any transcripts, but you can ask
23 them about that. But please understand what I was indicating
24 earlier, that some of these things in the Canadian
25 proceeding, that you may be able to obtain them easier,

1 that's specifically what I was talking about. I saw that
2 request. The government isn't under an obligation to get
3 those transcripts for you.

4 THE DEFENDANT: Well, the government went up
5 there and got what they wanted, the forms and whatever else.
6 I mean, I wouldn't think it would be a big deal to call.

7 THE COURT: She's indicated it is kind of a
8 big deal and they've asked, and they may get them and they
9 may not get them. But you're just as capable of getting
10 those documents, probably more capable because you are a
11 party at requesting those transcripts, and the government has
12 no obligation to jump through the hoops and ask for and pay
13 for transcripts that you want. So, if they're public
14 documents in Canada that are part of a proceeding that you
15 were part of, go ahead and request them and get them.

16 THE DEFENDANT: Okay. And as a matter of
17 evidence missing, physical evidence missing. When is the
18 government going to have all of these items together?

19 THE COURT: I don't know what you're referring
20 to. Ms. Carroll?

21 THE DEFENDANT: The Canadians seized 15 items,
22 they only provided six or seven.

23 MS. CARROLL: Your Honor, the government has
24 previously disclosed on multiple occasions all of the
25 evidence receipts and inventory receipts and property

1 receipts, all of those reflect any items that were retained
2 by the Canadians. It's the government's understanding that
3 anything obtained by the Canadians was probably retained
4 because it contained contraband.

5 The inventory list reflected two of the items.
6 I believe it's a wireless card and a USB port were actually
7 turned back over to the defendant. But anything the
8 government has, the government has disclosed the existence
9 of.

10 THE COURT: Mr. Jenkins, did you hear that
11 response?

12 THE DEFENDANT: Yes. It's not acceptable.

13 THE COURT: Well, it's acceptable to the
14 Court. They're not responsible for things they don't have
15 possession of. They have possession of it, they've indicated
16 that it's been turned over or it's available to you, that's
17 the situation.

18 THE DEFENDANT: Well, they seized 15 items.

19 THE COURT: Who seized 15 items?

20 THE DEFENDANT: The Canadians.

21 THE COURT: And did you just hear her response
22 about what they have control of and what's available to you?
23 Did you hear that response?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. I know you don't like the

1 response, but it's sufficient with regard to their discovery
2 responsibilities in this court.

3 THE DEFENDANT: Well, I mean, it seems like if
4 you want to take over the Canadian's case, you should provide
5 all the evidence and the background on the case. I mean, I
6 don't get where they can just pick and choose what they want
7 to use out of the original proceedings.

8 THE COURT: Mr. Jenkins, they have a
9 responsibility, discovery responsibility for things that they
10 have control over. If there are other things that the
11 Canadians may have custody and control of, you can go ahead
12 and try and get it yourself.

13 THE DEFENDANT: They seized them and I've
14 never seen them. I haven't gotten anything back.

15 THE COURT: Well, sir, you've gotten your
16 response and you've gotten a ruling from this Court with
17 regard to this. As far as this Court's concerned at this
18 point in time, unless I get different information, the
19 government has complied with their discovery obligations to
20 you, sir, in this area. So, what's your next question?

21 THE DEFENDANT: So, we're going to take this
22 up on appeal, I take it?

23 THE COURT: You can take anything up on appeal
24 you would like, sir.

25 THE DEFENDANT: I'm asking for all of the

1 evidence to be provided from the Canadian proceedings.

2 THE COURT: Again, you have the answer of the
3 government and a ruling from this Court that they have
4 fulfilled their discovery obligation with regard to evidence
5 that they have custody and control over. End of story.
6 What's next?

7 THE DEFENDANT: I guess that's it.

8 THE COURT: Okay, sir. Now we're going to
9 talk about a trial date. What's the date that we have
10 proposed here?

11 THE CLERK: July 8th.

12 THE COURT: I'm going to set a July 8th trial
13 date. The final pretrial conference is going to be scheduled
14 for July 1st at 11 a.m. here in this courtroom. Pretrial
15 submissions are due on June 17th, 2013. So, any pretrial
16 submissions that you want, Mr. Jenkins, they need to be
17 submitted to this Court by June 17th, 2013.

18 You will be advised of -- the Court will find
19 and you will be advised of stand-by counsel for trial
20 purposes. They will be here on the first day of trial, which
21 is scheduled for July 8th. Anything further from the
22 government?

23 MS. CARROLL: Your Honor, the only thing is
24 that one of the government witnesses is eight months pregnant
25 and she may or may not be in a position to travel on

1 July 1st. She's just not exactly sure what her position will
2 be, but the government will keep the Court apprised if
3 anything changes and if she will for any reason be
4 unavailable for trial.

5 THE COURT: How critical is this witness? Who
6 is it?

7 MS. CARROLL: She's one of the Canadian
8 investigators who performed the initial interview.

9 THE COURT: Okay. Keep me apprised if there
10 is something that we need to do to adjust, we'll try and do
11 that. But as of right now we have a firm trial date of
12 July 8th, final pretrial July 1st at 11 a.m., pretrial
13 submissions due on June 17th, 2013.

14 Mr. Jenkins, any questions or anything
15 further?

16 THE DEFENDANT: No.

17 THE COURT: Okay, sir. We'll see you on
18 July 1st.

19 THE CLERK: Court is adjourned.

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C E R T I F I C A T I O N

I, EILEEN MCDONOUGH, RPR, CRR, Official Court Reporter in and for the United States District Court, Northern District of New York, DO HEREBY CERTIFY that I attended the foregoing proceedings, took stenographic notes of the same, and that the foregoing is a true and correct transcript thereof.

A handwritten signature in cursive script, appearing to read "Eileen McDonough", is written above a horizontal line.

EILEEN MCDONOUGH, RPR, CRR
Official U.S. Court Reporter